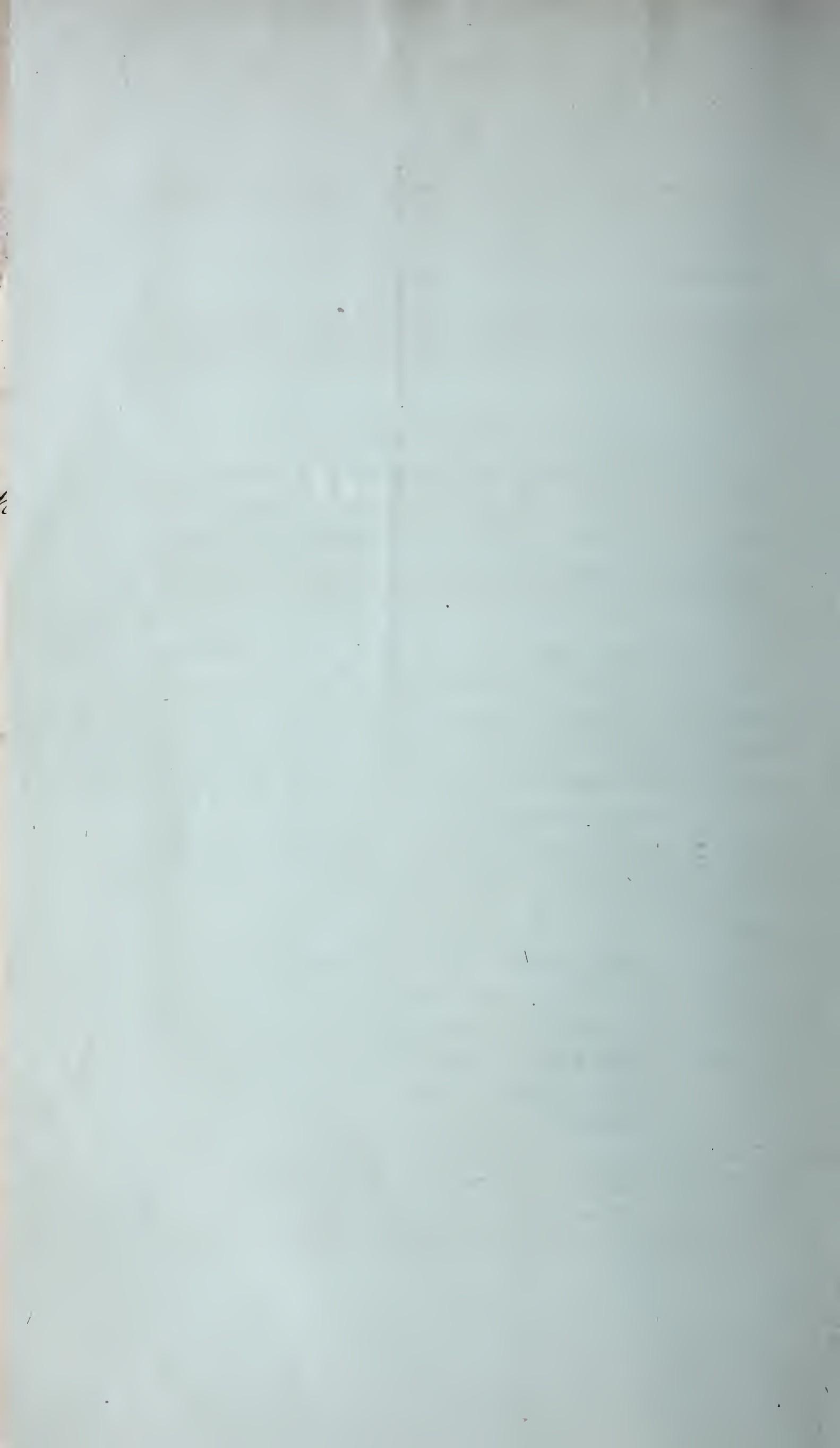


19



*To the Honorable the Judges of the Circuit Court of the
United States, in and for the Eastern District of Penn-
sylvania.*

The answer of the City of Philadelphia to the bill of complaint of Madeleine Henriette Girard, Marguerite P. Lardy, Anne Sthephanie de Lentilhac, and Alfred de Lentilhac, her husband, Frabricius Devars Dumaine, a minor, and Marguerite Palmire Dumaine, a minor, by their next friend, John Devars Dumaine, aliens.

These respondents saving and reserving to themselves, now and at all times hereafter, all and all manner of exception to the various errors, imperfections, and uncertainties in the said bill of complaint contained, for answer thereunto or unto so much thereof as they are advised that it is material for them to answer, they answer and say, that the plaintiffs in the said bill, together with John Devars Dumaine, in right of his wife, Ann Henriette Girard, John Auguste Girard, Marie C. Girard Deroux, and Louis Deroux, her husband, and Francoise Constance Fenelon Vidal, on the 24th day of December, 1852, caused a writ of summons in ejectment to issue out of this Court to October Sessions, 1852, No. 12, against the defendants in their corporate name of the mayor, aldermen, and citizens of Philadelphia, which said writ was duly served, and the suit thereby instituted is yet pending and undetermined. That in the said suit the parties therein, plaintiff, sought to recover from the defendants the same lands in Schuylkill and Columbia counties, which the plaintiffs, in the bill filed, pray may be transferred to them.

That the said plaintiffs, in the said bill, together with John Devars Dumaine, in right of his wife, Ann Henriette Girard,

Marie C. Girard Deroux, and Louis Deroux, her husband, Francois C. Fenelon Vidal, Marie Antoinette Hemphill, Harriet Girard Clark, and John Y. Clark, her husband, and Caroline E. Girard Peale, her husband, on the 22d day of December, 1852, caused certain writs of summons in ejectment to issue out of the Supreme Court of the Commonwealth of Pennsylvania, to December Term, 1852, Nos. 79, 80, 81, and 83, against the defendants in their said corporate name of the mayor, aldermen, and citizens of Philadelphia, which writs were duly served, and the suits thereby instituted are yet pending and undetermined; and in the said suits the plaintiffs therein sought to recover from the defendants the houses and lands in the city of Philadelphia, mentioned in the said bill.

And the said plaintiffs, in the said bill, together with John F. Girard, John Fabricius Girard, Louis F. Deroux, and Marie, his wife, Francois C. Vidal, John Y. Clark, and Harriet, his wife, Maria A. Hemphill, Franklin Peale, and Caroline E., his wife, have, since the filing of the said bill, namely, on the 3d day of September, 1859, caused a writ of summons in ejectment to issue out of the Court of Common Pleas for Schuylkill county, in the Commonwealth of Pennsylvania, to September Term, 1859, No. 703, against the defendants, which writ was duly served, and the suit thereby instituted is yet pending and undetermined. In the said suit the parties therein plaintiff seek to recover from the defendants one of the tracts of land in Schuylkill county, containing about 400 acres, which the plaintiffs, in the bill filed, pray may be transferred to them. And the defendants claim the same benefit as if they had pleaded in form the matters above stated, coupled with an answer, setting forth the facts herein above mentioned. And if the Court should determine that none of the facts above set forth are sufficient to abate or bar the plaintiff's bill, then the defendants pray that the plaintiffs may be required to elect between the said proceedings at law and the present suit in equity.

And the defendants, without waiving the matters herein before stated, as an answer in lieu of a plea, further answering, say,

that it is true, as therein stated, that the late Stephen Girard died at his domicil, in the city of Philadelphia, in December, in the year 1831, unmarried, without issue, leaving neither father or mother, but leaving a brother, Etienne Girard, and the heirs and representatives of another brother, John Girard, then deceased, and the heirs and representatives of a sister, Sophia Girard, also then deceased. But whether or not the said Etienne Girard is now deceased, and whether the parties mentioned in the said bill were his children, living at the time of his alleged death, is not known to these respondents, though they have no reason to believe to the contrary, and are content that the same may be held and taken to be as in the bill alleged.

That the said Stephen Girard died possessed of a large real and personal estate. But the amount and value of the same is greatly overstated in the said bill, as will hereafter be particularly shown and set forth.

That the said Stephen Girard, in his life-time, on or about the 16th February, 1830, duly made and published his last will in writing, and, also, did on the 25th of December, 1830, and on the 20th June, 1831, make and publish codicils thereto. Which said will and codicils were duly proved before the register of wills for the city any county of Philadelphia, and letters testamentary thereon issued to the parties therein appointed to be the executors thereof.

That by the said last will and testament the said testator, after making certain bequests to trustees or corporations for charitable purposes, and bequests to his relatives and friends, made the following bequests and devises to the respondents by their then corporate name of "The Mayor, Aldermen, and Citizens of Philadelphia," namely:

(1) The sum of ten thousand dollars, in trust to invest the same, and with the income, yearly, to purchase fuel and distribute the same amongst poor white house and room-keepers, residing in the city of Philadelphia.

(2) All the residue and remainder of his real and personal

estate, in trust (1) as to the sum of two millions of dollars, out of his personal estate, to apply and expend so much as might be necessary in erecting, in a prescribed location, a permanent college, with suitable outbuildings, sufficiently spacious for the residence and accommodation of at least three hundred scholars, poor white male orphans of the city of Philadelphia, between the age of six and ten years, to remain until they shall arrive at between fourteen and eighteen; and the requisite teachers and other persons necessary to the institution, and in supplying furniture, books, and all things needful for the same; and in further trust, to apply the income of so much of the \$2,000,000 as should remain, after erecting and furnishing the said college, to maintain the same, (2) as to the sum of \$500,000 out of the personal estate, in trust, to invest the same, and apply the income, annually, (a) to lay out, pave, and light a street or passage fronting the river Delaware, to be called Delaware avenue, extending from Vine to Cedar street; (b) to pull down and remove all wooden or other buildings constructed of combustible materials, within the limits of the city of Philadelphia, and to prohibit the future erection of any such; and (c) to widen, regulate, pave, and curb Water street in the said city, and to distribute the Schuylkill water therein upon a plan set forth by the said testator; and (d) when the said objects should have been accomplished, to apply the said income from time to time to the further improvement of the Delaware front of the city. (3) And as to the remainder, to apply the income, including therein as well the rents and income of his real estate in Pennsylvania, and the income of the proceeds of real estate elsewhere situate directed to be sold, as well as of his personal property, in trust,

- (1) To the further improvement and maintenance of said college.
- (2) To enable the said corporation to provide more effectually than then existed for the security of persons and property of the city by a competent police.

(3.) To enable "the said corporation to improve the city property and the general appearance of the city itself, and, in effect, to diminish the burden of taxation, now most oppressive, especially on those who are least able to bear it."

But the said last-mentioned bequest and devise was upon this further trust, that if the income arising from that part of the two millions of dollars remaining, after the construction and furnishing of the college and out buildings, should, owing to the number of orphans applying for admission, or other cause, be inadequate to the construction of new buildings, or the maintenance and education of as many orphans as might apply for admission, that such further sum as might be necessary for the construction of new buildings and the maintenance and education of such further number of orphans, as could be maintained and instructed within such buildings, as the place appropriated for the erection of the said same, (containing about forty acres of ground) should be adequate to, should be taken from the income of the said residuary estate.

And of the residuary estate, the testator declared the trusts to be the said improvement of the city, after providing for his said college, as his primary object.

And the respondents submit, that the income of the whole of the testator's residuary estate is to be applied to the maintenance and enlargement of the said college, if the same is needed for such purposes. And that the said city corporation is not entitled to apply any part of the said income for the municipal purposes mentioned by the testator, until the college is fully and adequately provided for. And that so much of said income as is not needed and used for such purposes, the defendants are entitled to use for such municipal purposes as are indicated in the said will.

And for a further answer to so much of the bill as alleges that the testator did not bequeath the whole "remainder of the said residue" of his estate for the support and maintenance of the said college, but only the income of his real estate in the city and

county of Philadelphia, and the dividends of his stock in the Schuylkill Navigation Company, they say that, on the contrary, they allege and insist, and submit, that the testator bequeathed and devised all the residue and remainder of his real and personal estate to the respondents, in trust, among other things, so far as regarded his real estate in Pennsylvania, to apply the net income to the same uses and purposes as were declared of and concerning the residue of his personal estate; and of the said personal estate he declared the uses and purposes to be—

- (1) As to \$2,000,000, to erect the college aforesaid;
- (2) As to \$500,000, to improve the eastern front of the city ; and
- (3) As to the remainder, to apply the same
 - (a) To the further improvement and maintenance of the said college, if the income of what remained of the sum of \$2,000,000 would not suffice for its enlarged maintenance ;
 - (b) For the improvement of the police ;
 - (c) For municipal purposes.

Which declaration of said uses and purposes, they say, requires and authorizes them to apply the whole of the net income of the remaining real and personal estate of the testator, to maintain the said college, and that until all the demands of the same are supplied, they will not be allowed to expend the said income for other purposes.

That the legislature of the Commonwealth of Pennsylvania, by an act approved March 24th, 1832, entitled "An Act to enable the mayor, aldermen, and citizens of Philadelphia to carry into effect certain improvements and to execute certain trusts," authorized the respondents to open the said Delaware avenue, widen the said Water street, and to provide for the removal of wooden buildings, and forbid their future construction in the said city ; and in § 24 thereof, provided as follows: "That it

shall be lawful for the mayor, aldermen, and citizens of Philadelphia to exercise all such jurisdiction, enact all such ordinances, and do and execute all such acts and things whatsoever, as may be necessary and convenient for the full and entire acceptance, execution, and prosecution of any and all the devises and bequests, trusts, and provisions contained in the said will," (of Mr. Girard,) "which are the subjects of the preceding parts of this act, and to enable the constituted authorities of the city of Philadelphia to carry which into effect, the said Stephen Girard has desired the legislature to enact the necessary laws."

And by a supplement to the said act, approved April 4, 1832, the said corporation, through their select and common councils, were authorized to provide, by ordinance or otherwise, for the election or appointment of such officers and agents as they might deem essential to the duties and trusts enjoined and created by the said will, which said acts of assembly the respondents pray may be taken as part of this their answer, as if the same were herein at large set forth.

That the executors of the said will handed over, delivered, assigned, and paid, in the months of January, April, and May, 1833, and subsequently, to the defendants, then known by the corporate name of the mayor, aldermen, and citizens of Philadelphia, as the residuary legatees of the said testator, certain certificates of stock and loans, and other evidences of debt, in which the personal estate of the testator had been invested by him or by the said executors.

The said corporation, under the advice of counsel, set apart, from the said personal estate, certificates of stock or loans of the market value of \$10,000 as an appropriation of so much thereof to fulfill the trust of the testator, to purchase fuel, and distribute the same among poor white house and room keepers of the said city; and in like manner they set apart certificates of stocks or loans, of the market value of \$500,000, as an appropriation of so much of the said personal estate, to fulfill the trust for the opening of Delaware avenue, &c. And they further set apart from the said personal estate, like certificates of the market

value of 2,000,000 of dollars, as an appropriation of so much thereof for the purpose of building, furnishing, and maintaining the said college. The balance of the said personal estate the said corporation considered and treated as part of the residue of the testator's estate, to be applied, together with the income of his real estate, to the municipal purposes directed by the testator, and they accordingly applied the net income to the municipal purposes indicated by the testator, until the same was required for the college, as will be hereinafter mentioned.

The said corporation, upon the death of the testator, entered upon all the real estate in the State of Pennsylvania, devised by the said will, and held, and now hold the same, except such thereof as has been taken from them, as will be hereafter mentioned, for the purpose and uses, and in the manner directed by the testator in his said will.

The income of the said fund, or appropriation of ten thousand and five hundred thousand dollars, has been appropriated respectively to the purchase and distribution of fuel, and the opening of the Delaware avenue and the widening of Water street, as directed by the testator.

The construction of the said college buildings was commenced in the year 1833, and finished in the year 1847. For a time the income alone of the said two millions of dollars, was used for this purpose, but, from time to time, as the necessity of a speedy prosecution of the work required more than the annual income would supply, parts of the capital were sold. At one time this was rendered imperative, by the failure of some of the corporations, in whose stocks or loans the capital was invested, to pay dividends or interest. Finally, upon the completion of the college buildings, the whole of the two millions had been absorbed. Then, the contingency provided for by the testator arrived, namely, there was no remaining part of the \$2,000,000 with which to maintain the college—and, as the testator had directed, recourse was had to the income of the residuary for that purpose. From that time to the present, the whole of the net income from

the residuary estate, including therein all the net income of the real estate held by the defendants, has been appropriated to the maintenance and endowment of the said college, and used for that purpose.

The real estate owned, or supposed to be owned, by Mr. Girard, at the time of his decease, and which he devised, or supposed he had devised, to the said corporation, consisted, besides houses and unoccupied lots of ground in the city and county of Philadelphia, of 54 tracts of unseated land in Schuylkill and Columbia counties, containing about twenty-two thousand eight hundred acres; of an undivided three-fourth parts in thirteen tracts of unseated land in Schuylkill county, containing about four thousand acres; of fifteen tracts of land, containing about eight thousand three hundred and eighty acres, in Erie county, in the State of Pennsylvania; of two undivided third parts of about two hundred and seven thousand acres of land near Washita, in the State of Louisiana; and of acres of land in the State of Kentucky.

The co-tenants of the said thirteen tracts of land in Schuylkill county, instituted proceedings for a partition of the same among the owners, which proceedings were so carried on, in due course of law, as to terminate in a sale of the lands sometime in the year 1851, and the said corporation's share of the proceeds was duly received, and applied to certain improvements of a portion of the real estate devised to them, situate in the city of Philadelphia.

The next of kin of Mr. Girard, or some of them, in the year 1850, brought an action of ejectment against the said corporation to recover possession of eleven of the said fifty-four tracts of land in Schuylkill and Columbia counties, (containing about four thousand four hundred acres,) on the ground, as they alleged, that the said testator had no title thereto at the date of his will. In 1853 the case was heard by a jury, who returned a verdict for the plaintiffs, which verdict the Court, after argument, upon a motion for a new trial refused to set aside, or order

a new trial. A writ of habere facias possessionem was subsequently issued, and the plaintiffs were put into possession of the said eleven tracts by the Marshal for the Eastern District of Pennsylvania.

The title to a number of the remaining tracts in Schuylkill and Columbia counties, is claimed by various parties, and in some cases ejectments have been brought and are now pending. In all these cases of adverse titles, the claims are of title paramount to Mr. Girard's.

The lands in Erie county were claimed by the heirs of John B. Wallace, Esq., who brought their suit in the Court of Common Pleas of Erie county, to May term 1853. In this case a verdict, after trial by a jury, was rendered for the plaintiffs, which was affirmed by the Supreme Court of Pennsylvania, upon a writ of error sued out by the defendants, in the year 1855.

The lands in Louisiana were claimed by the United States. An act of Congress having been passed to enable the defendants and certain parties claiming to be the owners of land in Louisiana, similarly situated, to proceed in equity to establish their title, they availed themselves, in conjunction with their co-devisee, the corporation of the city of New Orleans, of the privilege so given, and instituted the proper proceedings in the District Court of the United States, for the District of Louisiana. In this proceeding in the District Court, a decree was made in favor of the plaintiffs. From this the United States appealed, and after hearing and argument, the Supreme Court of the United States reversed the decree, and decided and decreed the title to be in the United States.

The lands in Kentucky were allowed to remain in the charge of the agent employed by Mr. Girard, for sale. The greater part of them have been sold at prices averaging less than two dollars per acre ; the proceeds have been regularly accounted for, and invested as part of the residue of the testator's estate. For that portion of the lands unsold, the price of one dollar per acre cannot be obtained, and the lands are still waiting purchasers.

Of the real estate out of the city and county of Philadelphia, there remain in the possession of the defendants, the balance of the lands in Kentucky: and forty-three tracts, containing about seventeen thousand acres, in Schuylkill and Columbia counties. About one-third of this land contains coal: the balance is only valuable for its timber, or for agricultural purposes.

The defendants admit that at the time of the death of Mr. Girard, the territorial boundaries of the corporation of the mayor, alderman, and citizens of Philadelphia, were the north side of Vine street, the south side of South street, and the rivers Delaware and Schuylkill. These boundaries were established originally by the provincial charter of 1701, and until the year 1854 had never been changed or altered. The legislative power of this corporation, at the time of the said death, was vested in two bodies called the Select and Common Councils, one-third of the members of the former and all of the latter were annually elected. The powers and the constitution of these legislative bodies had been from time to time variously enlarged, curtailed, and modified by the authority of the legislature.

The city of Philadelphia, thus bounded, formed a part of the territory of the county of Philadelphia. The legislature from time to time, commencing in the year 1794, set apart certain of the territory of the county, for the boundaries of municipal corporations, and incorporated the inhabitants therein into bodies politic. The corporations thus formed, were named respectively "The commissioners and inhabitants of the district of Southwark;" "The commissioners of the district of the Northern Liberties;" "The commissioners of the district of Spring Garden;" "The commissioners of the district of Kensington;" "The commissioners and inhabitants of the district of Moyamensing;" "The commissioners of the district of Penn;" "The commissioners and inhabitants of the district of Richmond;" "The district of West Philadelphia;" "The borough of Aramingo;" "The district of Belmont;" "The borough of Manayunk;" "The borough of Germantown;" "The borough of Frankford;"

"The borough of Whitehall," and "The borough of Bridesburg." All of these corporations had certain legislative powers exercised by Boards of Commissioners, or Town Councils.

The other corporations mentioned in the complainants' bill were township organizations, without any legislative powers.

The corporation of the mayor, aldermen, and citizens of Philadelphia, were empowered to levy taxes to enable it to perform its corporate duties. Among these corporate duties were not those of providing for the support of the administration of justice, the care of the poor, the regulation of the port, the maintenance of a system of public education, the opening of streets, &c. These were exercised by the county authorities. The county of Philadelphia, of which the city formed a part, had among other county officers, three commissioners, one of whom was annually elected by the people of the county. These commissioners were vested with the power to levy and collect the taxes for county purposes, among which were those which have just been enumerated except the poor, and over the exercise of their discretion in the laying of these taxes the corporation of the city, as such, had no control. The care of the poor was separately provided for. A corporation for that purpose was in existence, which exercised the right to assess and levy the taxes necessary in their opinion for such purpose. Thus the taxes for county and poor always exceeded those of the city for her own municipal purposes. To instance one year for an example. In the year 1853, the tax of the city for her municipal purposes was fifty-eight cents on the one hundred dollars of the assessed value of property, while the county tax was for county, school, and poor purposes ninety cents on one hundred dollars. The improvement of the city and the consequent increased value of property therein, always increased the amount of taxes, since the county rate was uniform, and assessed upon the value of the property.

This government of the city and county of Philadelphia, and its consequences and results, were well known to Mr. Girard. He was an inhabitant of the city for nearly fifty years, and was for several years a member of her Councils.

The project of uniting parts or the whole of the county of Philadelphia into one local government, was for some years previous to 1854 much discussed, and in the latter or the previous year its friends had so favorably impressed the community with its practicability and advantages, that a volunteer committee of citizens met publicly for the purpose of arranging the details and submitting them to the legislature of the Commonwealth for adoption into a law. The fruits of all this is to be seen in the act referred to in the plaintiff's bill, and called the consolidation act. The Select and Common Councils of the corporation of the mayor, aldermen, and citizens of Philadelphia, had not an opportunity of being heard upon this subject by the legislature.

The Common Council of the said corporation at their meeting, held January 7, 1854, by a majority of votes, passed the following preamble and resolutions, to wit: "Whereas a movement has been made in the House of Representatives to consolidate the city of Philadelphia, incorporated districts, boroughs, and townships of the county of Philadelphia into one municipal corporation, and the measure contemplated, being one generally desired by the citizens of the city of Philadelphia, they believing that the consolidation contemplated would be productive of increased prosperity to all included within its action; therefore, *Resolved*, That the Senators and members of the House of Representatives from the city of Philadelphia, be and they are hereby requested to endeavor to secure the passage of an act to consolidate the city, incorporated districts, boroughs and townships, into one municipality."

"*Resolved*, That the clerks of Select and Common Councils be and they are hereby directed to transmit to the Senators and members of the House of Representatives from the city of Philadelphia, copies of the foregoing preamble and resolutions."

According to the course of proceeding, these resolutions were sent to the Select Council for concurrence. In this body, at their meeting on January 7, 1854, these resolutions were ordered to be printed for the use of the members, and at a meeting held January 19, it was resolved, "That a joint special committee of

three members from each chamber be appointed to examine a bill now pending before the Legislature, for consolidating the city and districts into one corporation, for the purpose of endeavoring to have the provisions of said bill placed upon such a basis as will best protect the interests and trusts of the city." In this resolution the Common Council concurred. Both bodies appointed their respective members of the committee. Before the committee could report upon the subject referred to them, the bill was passed into a law.

The defendants submit that their acquiescence or dissent in or to the proposed measure of consolidating the said corporations could not have been effective to prevent or consummate that purpose. The said city corporation was the creature of the Legislature, to be destroyed or perpetuated at its pleasure. The said corporation neither accepted or repudiated its new or altered charter; it had no choice offered to it but to obey the will of the Legislature.

The defendants allege and submit that the Act of Assembly of February 2, 1854, entitled "A further supplement to an act entitled 'An act to incorporate the City of Philadelphia,'" did not destroy or abrogate the corporation of "the mayor, aldermen, and citizens of Philadelphia." It enlarged the territorial boundaries of the latter corporation, and changed its name to that of "The City of Philadelphia."

The first section of the said act provided that the powers of the corporation of the mayor, aldermen, and citizens of Philadelphia, as enlarged and modified by the said act, should be exercised and have effect over all the territory for the first time included within its corporate limits, and over all the inhabitants therein; and in the sixth section, that the said corporation should be vested with all the power, rights, privileges, and immunities of the corporation of the mayor, aldermen, and citizens of Philadelphia.

And the defendants deny that it was provided in the said act, that upon the election of a Mayor and Councils, as provided therein, the powers, rights, privileges, and immunities possessed

and enjoyed by the said corporation of the mayor, aldermen, and citizens of Philadelphia, should cease and terminate, or that the same ceased or terminated upon the issue of any proclamation, or otherwise howsoever; but they allege and say that the powers, rights, privileges, and immunities of the said last-named corporation were expressly continued in full force, vigor, and effect.

The defendants further show, that it is provided in the said act that all estates and incomes, at the passage thereof, held by any of the corporations united by the said act, shall be held by the city of Philadelphia, upon and for the same uses, trusts, limitations, charities and conditions, as the same were held at that time; and the defendants pray that the said act and all supplements thereto may be taken as part of this, their answer, as if the same were herein at large set forth.

And the defendants, in answer to so much of the complainant's bill as professes to show that they are incapable and unable to carry into effect so much of the devise and bequest of the said testator as applies to the appropriation of such part of the income of the residue of his estate as shall remain annually, after the necessities of the said college are provided for, to municipal purposes, say that they deny that they are incapable or unable to make and apply such appropriation, as they now proceed to show.

The defendants submit to the Court, whether the bequests and devise aforesaid to the mayor, aldermen, and citizens of Philadelphia was a gift to them absolutely, or whether the same was a devise and bequest in trust for the municipal purposes set forth.

If the Court should be of opinion that the said bequest was an absolute gift, then the defendants submit that the plaintiffs have no right or title to call upon them to account therefor, or to question their title thereto.

But if the Court should be of opinion that the said bequest was in trust for municipal purposes, they say that they claim to hold the same in trust to apply the said income for municipal pur-

poses affecting and relating to the property and inhabitants situated and residing within that part of their corporation limits which is bounded by Vine and South streets, and the rivers Delaware and Schuylkill.

The said trust of the remainder of the residue of the testator's estate is for the following objects :

1. To the further improvement and maintenance of the said college.
2. To enable the city to provide more effectually for the security of person and property by a competent police.
3. To enable the corporation to improve the city property and the general appearance of the city itself, and, in effect, to diminish the burden of taxation.

In respect to the execution of the said trusts, the defendants say, that they are in no wise hindered or interferred with by the provisions or consequences or effects of the said act of February 2, 1854 ; and they do not admit, nor have they admitted, that they cannot apply the said trust according to the will of the testator. By the said act of February 2, 1854, the councils of the said city are authorized and required to fix the rate and levy all the taxes, authorized by law, within its corporate limits, (except the State tax,) and direct the amount to be applied and paid for health, school, poor, city, and other purposes according to law, and they are required to vote the said taxes so as to show how much is raised for the said objects respectively. And they say, then in voting said taxes they specify in their ordinance for such purpose, how much of the taxes is assessed and levied for each object of taxation. Thus, in such ordinance assessing and levying the taxes for the year 1859, it is set forth as follows :

For the relief and employment of the poor, 15 cents in the \$100 of the assessed value of said property.

For public schools, 28 cents in the \$100 of the assessed value of said property.

For lighting the city, 9 cents in the \$100 of the assessed value of said property.

For loan tax, 75 cents in the \$100 of the assessed value of said property.

For expenses of police, 22 cents in the \$100 of the assessed value of said property.

For care of public highways, 22 cents in the \$100 of the assessed value of said property.

For city departments and ice boat, other than those mentioned, 4 cents in the \$100 of the assessed value of said property.

And they also require that the receiver of taxes shall print on the bills furnished to the tax-payers the rate of taxes voted, and the objects.

And the defendants say, that whenever the income from the said residuary fund will suffice for the necessities of the said college, and leave a surplus, applicable to the other trusts declared concerning the income of the said residue, that they can apply such overplus to the cost of maintaining the police in that part of the said city, between Vine and South streets, and the rivers Delaware and Schuylkill, and reduce the rate of taxation for the support of the police, on the property situate within the said limits, to the difference between the sum applicable from the said residuary for that purpose, and the sum assessed on property outside of the said limits ; and if the sum applicable from the said residuary for the expenses of the police will amount to the whole sum necessary for such expenses within the said limits, they may levy no tax upon property within the said limits for such expenses. And if such surplus will exceed the amount needed for the police expenses within the said limits, they will be enabled to improve the corporate property within the said limits, or apply it to improve the appearance of that portion of the city without resort to taxation for that purpose. And if it will be within the terms of the trust, to disregard the specific objects mentioned, then they may and can pay such surplus, beyond that which is needed for the necessities of the college directly into the city treasury in aid of the tax fund, and levy and assess upon the property within the said limits a sum less the amount so paid in aid of the tax fund.

The defendants instance the foregoing as some of the modes in which they may administer the aforesaid trusts; and the said act, called the Consolidation Act, having provided that the property or estates held by any of the corporations thereby united or consolidated, upon any trusts, should be held by the consolidated corporation upon the same trusts, limitations, charities, and conditions, expressly confers upon them the power and authority to carry out and execute the trusts in the said will, in the manner they have designated. This administration of the trust, they submit, is in no wise contrary to public policy; and that no rule of public policy is violated by accepting and administering a gift to improve one portion of the city and not the rest; and that an example of such is to be found in that part of the will of Mr. Girard, which bequeaths the income of the sum of \$500,000 to open one and widen another street in one portion of the city, and when these objects are accomplished to apply the income "to the further improvement of the eastern or Delaware front of the city."

And the defendants, referring to that part of the bill which alleges that since the passage of the said act of February 2d, 1854, there has been called into existence an interest in the said corporation, opposed to the performance of said trust, say, that the aid of a Court of Chancery can as readily be moved to interfere under the constitution of the corporation as made by the said act, as under that which existed previously; and that when the defendants refuse or decline to execute the said trusts on the ground of their inability to perform their accepted duty therein, the interposition of Chancery may be invoked; but they submit that they ought not to be deprived of their property on an imagination of difficulties that have not yet, at least, an existence.

And the defendants say, that the said bequest is for a charitable use because it is for public purposes, and that the condition annexed by the testator, that no part of his real estate in Pennsylvania "shall ever be sold or alienated," does not create a perpetuity forbidden by law, but that if any part of the said bequest is void, it is the condition and not the bequest.

And the defendants further answering say, that they never doubted that the said college was to be so administered, that orphans born in the city of Philadelphia were to be admitted therein in preference to those born elsewhere, but that it was questioned whether the testator meant by the city of Philadelphia, the territorial limits of the corporation of the mayor, aldermen, and citizens of Philadelphia, or what was commonly and popularly known as the city of Philadelphia, namely, the built part of the county of Philadelphia; and it was also questioned what was an orphan within the meaning of the said will, whether a child who was without a father living was an orphan, or whether a parentless child alone was such orphan. The case mentioned in the plaintiff's bill was submitted to the Supreme Court of Pennsylvania for decision upon the said questions, and not for any other purpose. And they say, in this connection, that such case was not made and submitted by the defendants, as is therein alleged, but a bill was filed by a party who represented a child, whose admission into the college was refused because its mother was living, and that the suit was as to them in invitum.

And the defendants further answering say, that at the present time there is in their hands, possession, or control the following property, real and personal, (exclusive of \$10,000 and \$500,000, set apart for furnishing the poor with fuel and for the improvement of Delaware avenue front, &c.,) devised or bequeathed to them by the aforesaid testator, or the proceeds of the same, and no more or other, namely, in the city of Philadelphia 152 dwelling-houses or stores, 3 vacant lots of ground, 2 wharves, 567 acres of farm land, with the buidings thereon, in that part of the said city which formerly was the borough of Passyunk and the district of Moyamensing, besides the Girard College and the lot appurtenant thereto. In Schuylkill and Columbia county, in the State of Pennsylvania, 43 tracts, containing about 17,000 acres of land, about one-third of which is believed to contain anthracite coal; and, in the State of Kentucky, about acres of unimproved land; and, of personal estate, the following, namely:

Five per cent. loan of the State of Pennsylvania, of the par value of - - - - -	\$91,399 91
Five per cent. loan of the city of Philadelphia, of the par value of - - - - -	52,103 18
Six per cent. loan of the city of Philadelphia, of the par value of - - - - -	21,300 00
Five per cent. loan of the Schuylkill Navigation Company, par, - - - - -	2,175 22
Loan to the Franklin Institute, - - - - -	1,000 00
Germantown and Perkiomen Turnpike Company stock, - - - - -	200 00
Philadelphia Exchange Company stock, - - - - -	10,000 00
Four thousand shares in the Danville and Pottsville Railroad Company, - - - - -	200,000 00
Two thousand and two hundred shares in the Schuyl- kill Navigation Company, - - - - -	110,000 00
Loan to Ridge-road Turnpike Company, par \$10,000; certificates of interest, \$900, - - - - -	10,900 00
One hundred and two shares in the Chesapeake and Delaware Canal Company, - - - - -	20,400 00
One hundred and two shares in the Susquehanna and Lehigh Turnpike Company, - - - - -	100 00
	<hr/>
	\$519,578 31
	<hr/>

The defendants say, that since their possession of the said devised and bequeathed estate, they have kept the real estate in good repair, improved the same whenever opportunities presented, by altering existing buildings to meet the increased wants of business or occupants, and erecting new ones on vacant ground, and have let out the same to tenants at as advantageous rents as was received by private owners of similar property. The real estate in that part of the city, which was the district of Moyamensing and township of Passyunk, has been and still is rented and occupied for farming purposes, and for these purposes must continue to be rented and occupied for many years, as there is no demand for such improvements as would authorize their occu-

pation by houses for residences or for business purposes. The lands in Schuylkill county have remained, as they were left by the testator, unimproved and without tenants. A number of years ago, a lease of a large portion of that part of them supposed to contain coal was made to the Danville and Pottsville Railroad Company at a small rent, with a view to assist the said company in the prosecution of their improvement, and in the expectation that when their road was completed a market could be reached by it, at which the coal mined could be sold. But the effort proved abortive, and the company very soon abandoned their enterprise. The lands have been, until very recently, remote from improvements which would enable their products to be brought to market. However, lately in the neighborhood of the lands railroads have been built, and the lands have been advertised for rent, and the subject of accepting certain offers to lease them are now under the consideration of the proper committees or agents of the defendants.

The greater portion of the personal property remains in the same state, as to its investment, as it was left by the testator. This property (exclusive of the Delaware avenue fund and the fuel fund) is of the par value of \$519,578 31, though its real value is of a far less sum. The investment in the stock of the Danville and Pottsville Railroad, amounting to the par value of 200,000 dollars, is worthless, the company having become extinct some years ago. The investments in the stocks of the Schuylkill Navigation Company, the Chesapeake and Delaware Canal Company, the Susquehanna and Lehigh Turnpike, and the loan to the Ridge-road Turnpike Company, amounting to the total sum of \$141,400, are without market value. Of the entire investments of this personal property, of the par value of \$519,578 31, but the sum of about 178,000 dollars is, in interest or dividend, paying loans or stocks.

The gross income of the residuary estate, consisting of all of the testator's real estate held by the defendants, and the personality, except that which has been set aside for the Delaware avenue fund, and for the fund to supply poor house and room

keepers with fuel, was, in the year 1857, when the largest income ever realized from the estate was received, as follows :

Rent of real estate in the city of Philadelphia.	\$155,709 61
Income of real estate in Schuylkill county, -	64 00
Dividends and income from investments in stocks and loans, - - - - -	8,643 92
	<hr/>
	\$164,417 53

The expenses chargeable against the same, for the same year, were—

Annuities, - - - - -	\$1,100 00
Taxes and water rents, - - -	32,343 88
Salaries, - - - - -	3,700 00
Repairs, - - - - -	13,990 12
Incidental and miscellaneous, -	3,191 09
Lands out of the city, taxes, law expenses, &c., - - -	4,950 33
Improving real estate—	
Papering, - - -	\$2,976 49
Outside painting, -	1,474 99
Inside painting, -	2,148 74
	<hr/>
	\$6,600 22
Permanent improvements—	
Improvement on vacant lot, -	2,982 63
Erecting buildings, - - -	3,000 00
	<hr/>
	71,858 27
Leaving net income, - - -	\$92,559 26
	<hr/>

The sum expended for the purposes of the college for the same year, was \$95,538 59, being upwards of \$3,000 beyond the net income of the estate. From whence this excess was obtained, will be presently shown. The annual gross and net income of the residuary estate, and the application of the surplus, from the year 1832 to the present time, is hereafter exhibited in answer

to one of the plaintiffs' interrogatories. An explanation of the mode of keeping the account of the estate is necessary to show why in some of the years the surplus has not been expended, and why in others a greater sum than such surplus has been disposed of. In the commencement of the year the defendants caused estimates to be made of the probable income of the estate, and an estimate of the expenses of charge of administration and for taxes, repairs, and improvements. The amount so estimated for expenses, they appropriate for such purposes, and the difference between such estimated expenses and the income, they have, since 1847, appropriated, with one or two trifling exceptions, for the support of the college. At the end of the year the accounts are closed, and all sums unpaid, though appropriated, are carried to the next year's income. Thus, if an improvement be commenced, and not completed or paid for, the balance unpaid is so carried to the subsequent year's income. The amount of the balance is re-appropriated during the new year to the original object. When a series of years is examined, it will appear that the income and the expenditures balance, which, as has been stated, will not appear in each year's account.

In some instances the defendants have invested part of the income. They judged this proper, in order to replace, to the extent of the investments so made, in the capital of the residuary, which had been seriously impaired, in consequence of some of the corporations, in whose loans or stocks it was invested, having become bankrupt.

The defendants say, that the beneficiaries of the college will be limited only by the means to support them. Since its opening the number of applicants for admission have far exceeded the ability to maintain them. The whole number of orphans who have applied for admission since 1847 has been 1,673, and there have been admitted 705. The number of inmates at present is 330; the number awaiting admission is 221. The whole, or nearly the whole, of the applicants, hitherto, have been orphans born in the present city. Whenever the means at the command of the managers of the college will justify them in extending its bene-

fits to orphans born *in the State*, outside of the city, the applications for admission will be largely increased.

The defendants deny that there is any sum of money in their hands, being accumulations of surplus unexpended income, except the sum invested as they have before stated. But they say that they have appropriated and applied the income of the said estate in the manner directed by the will of the testator. And they further deny that they, or the corporation of the mayor, aldermen, and citizens of Philadelphia have wrongfully or unnecessarily expended any of the moneys of the estate.

And the defendants, in reference to that part of the plaintiffs' bill as represents that the prospective value of the lands in Schuylkill and Columbia counties is so great as to justify the conclusion that their annual rent will far more than suffice for the wants of the college in any event, say, that although they are justified in believing that the land is of large value, and that it will eventually yield a very considerable income, yet they believe that the value is much over-stated. The number of acres of said lands is not 29,000 and odd, as stated by the plaintiffs, but is actually but 17,000, and of this number, but one-third is supposed to contain coal. Their annual value, in rent for coal leave, is uncertain, depending upon the quality of the coal, freedom of the mines from faults, the absence of water, and the demands of trade.

To the interrogatories which the defendants are required to answer, thus say :

To the first, That they admit the fact of the death of Mr. Girard as inquired of therein, to be as is alleged in the bill, and that he died possessed of real and personal estate estimated to be of the value of several millions of dollars, and they are content to admit that the plaintiffs are of kindred to him, as in the bill stated.

To the second, that they admit the fact inquired of herein to be as is in the bill alleged, and that the exhibit marked "A" to the bill annexed, is a true copy of his will and the codicils thereto.

To the third, They admit that the municipality called by the corporate name of the mayor, aldermen, and citizens of Philadelphia, was established and chartered with the boundaries as stated in the bill. And that the said corporation was enlarged by force of the act of the General Assembly of the Commonwealth of Pennsylvania, approved February 2, 1854, so as to embrace the territory governed by certain other corporate and quasi corporate bodies, mentioned in the bill. That so far as the interrogatory refers to the franchises, debts, taxes, and administrations thereof, they refer to the said act of Assembly; at the same time they deny that any of the franchises of the corporation of the mayor, aldermen, and citizens of Philadelphia, were abrogated by the said act, but that the same were continued and remain in full force and effect.

To the fourth, That what is called in the said interrogatory "the consolidated charter," was not accepted by the corporators mentioned in the said interrogatory by any formal or public act. It was imposed upon them by the legislative authority. It was a matter of public notoriety, that some of the said corporators petitioned the General Assembly of the Commonwealth therefor, and some protested against it. They admit that nearly all of the members of the Legislature from the city and county of Philadelphia voted in favor of the said charter, as they ascertain from the published proceedings of the said Assembly. That the proceedings of the Select and Common Councils of the corporation of the mayor, aldermen, and citizens of Philadelphia, show that the last-mentioned body did, by a majority vote, approve of the proposed amended or extended or altered charter, but that the latter body did not. And for a further answer to the inquiry as to the proceedings of the municipal authorities of the said corpora-

tion, they refer to so much of their answer to the plaintiff's bill as relates thereto.

To the fifth, That they have submitted to the Court whether they are entitled to hold the property mentioned in the said interrogatory as absolute owners, or whether they hold in trust for the purposes mentioned in the interrogatory. If they are decreed to hold it in trust, they claim to hold in trust to improve the police and property, and to diminish taxation in that part of the city of Philadelphia which before the 2d of February, 1854, was comprised within the territorial limits of the corporation of the mayor, aldermen, and citizens of Philadelphia.

To the sixth, That they have not applied any portion of the property mentioned or referred to in the said interrogatory to the municipal purposes therein mentioned, because the same has been required for the purposes and the support of the Girard College.

To the seventh, That they hold of the property which was of the said Stephen Girard, the following real estate, namely, in the city of Philadelphia, 152 dwelling houses and store houses, the Girard College and its grounds, 3 vacant lots of land, 2 wharves, and 567 acres of farm land in that part of the city which was formerly the township of Passyunk and the district of Moyamensing. In the counties of Schuylkill and Columbia, in the State of Pennsylvania, 43 tracts containing about 17,000 acres of land, about one-third of which is supposed to contain Anthracite coal, and in the State of Kentucky about 1,000 acres of land. Beside the above-named they hold no other realty of the estate of Mr. Girard.

The gross annual income of the real estate in the city of Philadelphia is about one hundred and fifty-six thousand dollars, and not more, and the clear annual income is eighty-six thousand dollars, and not more.

To the eighth, That they hold of personal property, which was of the testator, that which they have specifically set forth in their

answer, (exclusive of \$10,000 and \$500,000 appropriated and held for the Delaware avenue improvement, and the fuel fund,) amounting to the par or nominal value of \$519,578 31, though the real value thereof is of a much less sum. The annual income of the said property is about \$9,000, and no more. They hold no other personality of the said estate, except that in this answer mentioned.

To the ninth, They answer in the affirmative.

To the tenth, That the sums assumed in the said interrogatory as the income of the personality and realty are incorrect—the net income of both being less than therein stated, as they have before shown. That the sum mentioned as the one required for the annual expenses of the college is the sum now appropriated, because there is no further sum in their hands for that purpose; but the increased demands of the college, in consequence of the number of orphans applying for admission, require a much larger amount for its annual maintenance. And they are informed that there is hardly a limit to the amount which would be required for the maintenance of the college, if all the orphans applying for admission could be received. That there is no other deduction or abatement to be made from the net income of said real and personal estate, except the payment of certain annuities of no great amount, after providing for the wants of the college, to precede the application of the income to the objects of improving the police, and the property of the city, the general appearance of the city itself, and diminishing the burden of taxation. And whether, if the said objects are not attainable, the said income should be enjoyed by the heirs-at-law of the said testator, the defendants submit to the judgment of the Court.

To the eleventh, They answer in the negative.

To the twelfth, That to so much of the said interrogatory as inquires concerning accumulations of surplus income, they answer in the negative. And to so much thereof as inquires if they can or not apply surplus income for the municipal purposes mentioned in the said interrogatory, they answer that they can so apply such income.

To the thirteenth, That if the coal lands in the counties of Schuylkill and Columbia were worked and rented, the income of the estates of the said testator would be increased, but to what extent they are unable to form any estimate. But they believe that the necessities of the college will absorb nearly any amount of income which the estates may produce.

To the fourteenth, That the estates and income of the testator are not liable by the terms of the said will to any other charge except the annuities mentioned in the said interrogatory, and that the said annuities are from time to time falling in at the deaths of the respective annuitants.

And the defendants hereto annex accounts showing the yearly income of the residuary estate, and its annual appropriation.

1832. Income real estate,	-	-	\$44,907 60	
				\$44,907 60
Appropriations :				
Annuities,	-	-	\$3,500 00	
Salaries and incidentals,	-	-	3,413 79	
Taxes and water rents,	-	-	9,890 77	
Repairs, &c.,	-	-	2,629 65	
Lands out of the county, taxes, &c.,	-	-	6,000 00	
				\$25,434 21
1833. Income real estate,	-	-	\$55,607 66	
" personal estate,	-	-	12,345 78	
				\$67,953 44
Appropriations :				
Annuities,	-	-	\$4,300 00	
Salaries and incidentals,	-	-	7,801 61	
Taxes and water rents,	-	-	9,611 79	
Repairs to real estate,	-	-	10,858 89	
Building stores and wharf,	-	-	5,470 64	
" culvert,	-	-	1,877 95	
" railroad,	-	-	1,800 00	
Paving,	-	-	7,741 98	
Lands in Louisiana,	-	-	1,026 55	
				\$50,489 41

1834. Income real estate, -	-	\$62,856 38	
" personal estate,	-	11,348 20	
			\$74,204 58

Appropriations:

Annuities, -	-	-	\$4,300 00	
Salaries and incidentals,	-	-	5,656 95	
Taxes and water rents,	-	-	10,473 42	
Repairs, -	-	-	12,141 12	
Building stores and wharves,	-	-	12,529 36	
Lands in Pennsylvania and Kentucky,	-	-	1,192 15	
" Erie,	-	-	279 29	
" Louisiana,	-	-	1,231 14	
Building culvert,	-	-	2,122 05	
" railroad,	-	-	4,228 55	
Paving,	-	-	9,229 47	
Police,	-	-	26,322 53	
				\$89,706 03

1835. Income real estate, -	-	\$72,317 36	
" personal estate,	-	17,406 80	
			\$89,724 16

Appropriations:

Annuities, -	-	-	\$4,750 00	
Salaries, &c.,	-	-	5,994 16	
Taxes and water rents,	-	-	18,175 80	
Repairs, -	-	-	7,581 65	
Lands out of the county,	-	-	2,035 32	
" in Louisiana,	-	-	1,140 00	
Building stores,	-	-	8,487 21	
Police,	-	-	27,831 74	
				\$70,995 88

1836. Income real estate, -	-	\$86,081 69	
" personal estate,	-	21,970 63	
			\$108,052 32

Appropriations:

Annuities, -	-	-	\$3,100 00	
Salaries, &c.,	-	-	6,744 20	
Taxes and water rents,	-	-	12,655 69	
Repairs, -	-	-	6,101 23	
Lands out of the county,	-	-	3,847 74	
Building stores,	-	-	13,092 95	
" market houses,	-	-	20,000 00	
Police,	-	-	31,651 90	
				\$97,193 71

1837. Income real estate, -	-	\$97,604 44
" personal estate,	-	27,747 24

		\$125,351 68
Appropriations :		
Annuities,	-	\$4,250 00
Salaries, &c.,	-	7,227 66
Taxes,	-	13,180 92
Repairs,	-	12,676 51
Lands out of the county,	-	5,303 73
Building stores,	-	25,680 90
" wharf,	-	12,000 00
Police,	-	32,950 00

		\$113,275 72
1838. Income real estate, -	-	\$108,505 26
" personal estate,	-	25,000 24

		\$133,505 50
Appropriations :		
Annuities,	-	\$2,950 00
Salaries, &c.,	-	8,769 60
Taxes,	-	15,977 44
Repairs,	-	16,982 11
Lands out of the county,	-	2,866 19
Building stores,	-	104 90
" wharf,	-	7,000 00
" tobacco warehouse,	-	7,000 00
" offices,	-	3,656 29
Iron main,	-	23,000 00
Police,	-	33,190 00

		\$121,496 53
1839. Income real estate, -	-	\$112,576 46
" personal estate,	-	21,595 24

		\$134,171 70
Appropriations :		
Annuities,	-	\$4,050 00
Salaries, &c.,	-	7,027 97
Taxes,	-	16,291 00
Repairs,	-	14,881 35
Lands out of the county,	-	1,911 55
Public squares,	-	5,000 00
Wharves,	-	2,050 00
Lamps and lamp posts,	-	10,950 00
Paving,	-	8,000 00
Improvements at Fairmount,	-	14,000 00
Building offices,	-	5,741 80
Police,	-	33,055 75

		\$122,959 42

31

1840. Income real estate,	-	\$111,312 24	
" personal estate,	-	14,889 98	
		\$126,212 22	

Appropriations :

Annuities,	-	-	\$3,600 00
Salaries, &c.,	-	-	5,216 44
Taxes,	-	-	18,451 95
Repairs,	-	-	8,321 88
Lands out of the county,	-	-	4,401 65
Squares,	-	-	4,000 00
Wharves,	-	-	1,000 00
Lamps and posts,	-	-	6,000 00
Paving,	-	-	10,000 00
Improvements at Fairmount,	-	-	14,000 00
Culverts,	-	-	5,000 00
Repairing streets,	-	-	15,000 00
Police,	-	-	33,248 50
			<u>\$128,240 42</u>

1841. Income real estate,	-	\$113,410 34	
" personal estate,	-	8,949 03	
		\$122,359 27	

Appropriations :

Annuities,	-	-	\$3,600 00
Salaries, &c.,	-	-	4,908 16
Taxes,	-	-	19,442 61
Repairs,	-	-	13,089 53
Lands out of the county,	-	-	2,060 56
Police,	-	-	33,107 00
			<u>\$76,207 86</u>

1842. Income real estate	-	\$94,919 36	
" personal estate,	-	3,722 69	
		\$98,642 05	

Appropriations :

Annuities,	-	-	\$3,100 00
Salaries, &c.,	-	-	5,749 17
Taxes,	-	-	19,089 14
Repairs,	-	-	14,173 01
Lands out of the county,	-	-	3,100 73
Squares,	-	-	2,000 00
Wharves,	-	-	700 00
Lamps and posts,	-	-	4,000 00
Paving,	-	-	6,000 00
Culverts,	-	-	3,300 00
Repaving,	-	-	9,000 00
Police,	-	-	6,945 00
			<u>\$77,157 05</u>

1843. Income real estate, -	-	\$80,571 01
" personal estate, -	-	1,853 18
		<hr/>
		\$82,424 19

Appropriations:

Annuities,	-	-	-	\$3,300 00
Salaries, &c.,	-	-	-	7,515 41
Taxes,	-	-	-	19,443 75
Repairs,	-	-	-	14,978 13
Lands out of the county,	-	-	-	2,353 12
				<hr/>
				\$47,590 41
				<hr/>

1844. Income real estate,	-	\$86,081 97
" personal estate,	-	1,768 68
		<hr/>
		\$87,850 65

Appropriations:

Annuities,	-	-	\$4,400 00	
Salaries, &c.,	-	-	17,286 48	
Taxes,	-	-	-	19,862 00
Repairs,	-	-	-	14,990 90
Lands out of the county,	-	-	-	3,542 24
				<hr/>
				\$60,081 62
				<hr/>

1845. Income real estate,	-	\$88,776 88
" personal estate,	-	3,310 91
		<hr/>
		\$92,087 79

Appropriations:

Annuities,	-	-	-	\$3,300 00
Salaries, &c.,	-	-	-	4,982 33
Taxes,	-	-	-	19,155 41
Repairs,	-	-	-	14,710 02
Lands out of the county,	-	-	-	1,984 28
Insurance,	-	-	-	5,922 71
Building stores,	-	-	-	28,986 25
Police,	-	-	-	45,000 00
				<hr/>
				\$124,041 00
				<hr/>

33

1846. Income real estate, -	-	\$104,360 60	
" personal estate, -	-	6,815 50	
			\$111,176 10

Appropriations:

Annuities, -	-	-	\$2,300 00
Salaries, &c., -	-	-	5,086 49
Taxes, -	-	-	19,113 04
Repairs, -	-	-	15,000 00
Lands out of the county, -	-	-	4,090 47
Rebuilding, -	-	-	7,000 00
Tax Fund, -	-	-	43,000 00
			\$95,590 00

1847. Income real estate, -	-	\$105,584 10	
" personal estate, -	-	7,110 87	
			\$112,694 97

Appropriations:

Annuities, -	-	-	\$2,300 00
Salaries, &c., -	-	-	5,983 78
Taxes, -	-	-	22,228 62
Repairs, -	-	-	15,000 00
Lands out of the county, -	-	-	3,484 81
Wharves, -	-	-	7,600 00
Improvement of property, Jones' alley, -	-	-	31,000 00
Building College, -	-	-	5,788 60
Furnishing "	-	-	6,910 00
Tax Fund, -	-	-	1,750 00
			\$102,045 81

The excess of income over appropriations in the years 1832, 1833,
 1835, 1836, 1837, 1838, 1839, 1841, 1842, 1843, 1844, 1846,
 and 1847, was, - - - - - - - - - - - \$249,696 00

The excess of appropriations over income in the years 1834, 1840,
 and 1845, was, - - - - - - - - - - - 49,482 86

Net excess of income over appropriations, - - - - - \$200,213 14

This excess was thus absorbed:

By advancing to the executors of Mr. Girard funds to aid them to complete the buildings on the square between Market, Chestnut, Eleventh and Twelfth streets. To obtain the funds so advanced, the City Corporation borrowed money and repaid the same, with its interest, out of the income of the residuary estate, to the amount of - - - - - - - - - - - - - - - - - \$134,119 78

And by investments in Pennsylvania 5 per cent. loan, all the balance in their hands, except the sum of \$13,805 77

1848.	Income from real estate,	-	\$109,742 38	
"	" Sch'l co.,	-	192 55	
"	personal estate,	-	8,283 22	
"	sundries,	-	925 00	
			-----	\$149,143 15
	Balance from 1847,			13,805 77
			-----	\$132,948 92

Appropriations:

Annuities,	-	-	-	-	\$1,900 00
Taxes, &c.,	-	-	-	-	24,300 00
Salaries,	-	-	-	-	3,700 00
Repairs to real estate,	-	-	-	-	12,059 95
Lands out of the county,	-	-	-	-	4,736 10
Incidentals and miscellaneous,	-	-	-	-	1,728 95
Improvements real estate, Jones' alley,	-				5,000 00
" " 66 S. Third st.,	-				8,000 00
" " 25 N. Front,	-				800 00
" " 28 "	-				200 00
Extending wharf,	-	-	-	-	400 00
Culvert for use of houses belonging to estate,					1,396 16
Purchase of right of way,	-	-	-	-	1,500 00
College,	-	-	-	-	31,821 83
			-----		\$97,542 99

1849. Income real estate,	-	\$115,555 96	
" " Sch'l co.,	-	526 48	
" personal estate,	-	17,310 29	
			\$133,392 73

Appropriations :

Annuities,	-	-	-	\$1,900 00
Taxes, &c.,	-	-	-	24,662 87
Salaries,	-	-	-	3,700 00
Repairs,	-	-	-	18,000 00
Incidentals,	-	-	-	4,408 50
Lands out of the county,	-	-	-	5,000 00
Painting real estate,	-	-	-	848 95
College,	-	-	-	72,743 78
				\$131,264 10

1850. Income real estate,	-	\$120,507 49	
" personal estate,	-	8,157 17	
			\$128,664 66

Appropriations :

Annuities,	-	-	-	\$1,900 00
Taxes, &c.,	-	-	-	23,197 57
Salaries,	-	-	-	3,700 00
Repairs,	-	-	-	6,843 10
Incidentals,	-	-	-	2,709 39
Lands out of the county,	-	-	-	6,752 86
Permanent improvements, real estate,	-	-	-	3,962 57
Footway, Northern Liberties,	-	-	-	381 69
Tax fund,	-	-	-	9,000 00
College,	-	-	-	81,368 81
				\$151,268 29

1851. Income real estate,	-	\$123,166 50	
" personal estate,	-	8,581 96	
			\$131,698 46

Appropriations :

Annuities,	-	-	-	\$1,900 00
Taxes,	-	-	-	23,822 33
Salaries,	-	-	-	3,700 00
Repairs,	-	-	-	6,120 94
Incidentals,	-	-	-	9,445 42
Lands out of the county,	-	-	-	5,025 31
Papering and painting,	-	-	-	5,035 00
Permanent improvements,	-	-	-	1,928 35
Curbing and paving around College,	-	-	-	4,389 74
Gas in College,	-	-	-	3,444 66
College,	-	-	-	67,544 11
				\$132,355 86

1852. Income real estate,	-	\$122,523 26
" " Schuylkill co.,		586 58
" personal estate, -		9,080 96

\$132,190 80

Appropriations:

Annuities,	-	-	-	\$1,650 00
Taxes,	-	-	-	24,554 25
Salaries,	-	-	-	4,200 00
Repairs,	-	-	-	5,593 85
Incidentals,	-	-	-	3,798 72
Lands out of the county,	-	-	-	5,392 68
Painting and papering,	-	-	-	8,821 56
Permanent improvements,	-	-	-	2,350 00
Improvement north Water street,	-	-	-	1,732 88
Curbing, paving, and water pipes, Girard College,	-	-	-	1,928 00
Improvement Third and Chestnut sts.,	-	-	-	57 843 43
Permanent improvement at Girard College,	-	-	-	5,058 21
College, -	-	-	-	60,512 37

\$183,435 95

1853. Income real estate,	-	\$136,907 69
" " Schuylkill co.,		1,303 72
" personal estate, -		8,458 96

\$146,670 37

Appropriations:

Annuities,	-	-	-	\$1,400 00
Taxes,	-	-	-	27,406 81
Salaries,	-	-	-	4,050 00
Repairs,	-	-	-	8,965 85
Incidentals,	-	-	-	9,053 24
Lands out of the county,	-	-	-	3,283 33
Papering and painting,	-	-	-	3,075 14
Repairs at College,	-	-	-	1,500 00
Permanent improvements,	-	-	-	1,980 00
Permanent improvement at Third and Chestnut,	-	-	-	41,708 99
Permanent improvement at College,	-	-	-	441 79
Outfits for pupils at College,	-	-	-	2,595 85
Curbing and paving,	-	-	-	2,739 02
College, -	-	-	-	63,809 76

\$173,985 86

1854. Income real estate,	-	\$152,277 90
" personal estate,	-	9,154 71
		\$161,432 61

Appropriations:

Annuities,	-	-	-	\$1,250 00
Taxes,	-	-	-	26,480 52
Salaries,	-	-	-	5,049 89
Repairs,	-	-	-	7,871 36
Incidentals,	-	-	-	2,078 91
Lands out of the county,	-	-	-	3,145 18
Papering and painting,	-	-	-	3,778 28
Ice house at College,	-	-	-	1,289 68
College,	-	-	-	71,402 37
				\$122,346 19

1855. Income real estate,	-	\$153,199 33
" " Schuylkill co.,		1,034 20
" personal estate,	-	8,318 32
" sundries,	-	363 87
		\$162,915 72

Appropriations:

Annuities,	-	-	-	\$1,100 00
Taxes,	-	-	-	25,276 08
Salaries,	-	-	-	4,800 00
Repairs,	-	-	-	8,696 03
Incidentals,	-	-	-	2,498 16
Lands out of the county,	-	-	-	3,828 16
Papering and painting,	-	-	-	7,048 81
Permanent improvements,	-	-	-	3,000 00
College,	-	-	-	81,754 84
				\$138,002 08

1856. Income real estate,	-	\$152,462 61
" " Schuylkill co.,		877 79
" personal estate,	-	9,050 92
		\$162,391 32

Appropriations:

Annuities,	-	-	-	\$1,100 00
Taxes,	-	-	-	30,175 81
Salaries,	-	-	-	4,125 00
Repairs,	-	-	-	12,096 45
Incidentals,	-	-	-	6,973 16
Lands out of the county,	-	-	-	2,936 60
Papering and painting,	-	-	-	11,718 91
Permanent improvements,	-	-	-	1,985 08
Buildings at College,	-	-	-	4,493 83
College,	-	-	-	49,288 50
				\$124,893 34

1857. Income real estate,	-	\$155,709 61	.
" " Schuylkill co.,		64 00	
" personal estate,	-	8,643 92	
			\$164,417 58

Appropriations:

Annuities,	-	-	-	\$1,100 00
Taxes,	-	-	-	32,343 88
Salaries,	-	-	-	3,700 00
Repairs,	-	-	-	13,900 12
Incidentals,	-	-	-	3,191 09
Lands out of the county,			-	4,950 33
Papering and painting,	-	-	-	6,600 22
Permanent improvements,	-	-	-	2,982 63
Improvement at Coates street,	-	-	-	3,000 00
New buildings at college,	-	-	-	4,856 18
College,	-	-	-	90,682 41
				\$167,396 86

1858. Income real estate,	-	\$152,606 20	
" " Schuylkill co.,		12 50	
" personal estate,	-	8,661 29	
			\$161,279 99

Appropriations:

Annuities,	-	-	-	\$1,100 00
Taxes,	-	-	-	29,941 01
Salaries,	-	-	-	3,700 00
Repairs	-	-	-	12,990 07
Incidentals,	-	-	-	3,236 22
Lands out of the county,			-	6,014 17
Papering and painting,	-	-	-	7,013 92
Permanent improvements,	-	-	-	2,488 91
Improvement at Coates street,	-	-	-	33,115 91
College,	-	-	-	88,767 86
				\$188,367 66

1859. Income real estate,	-	\$148,550 38	
" lands Schuylkill co.,		50 00	
" personal property,		8,567 14	
			\$157,168 12

Appropriations:

Annuities,	-	-	-	\$1,100 00
Salaries,	-	-	-	3,700 00
Carried forward,	-	-	-	\$4,800 00

Brought forward,	-	-	-	\$4,800	00
Taxes and water rents,	-	-	-	28,361	55
Repairs,	-	-	-	15,382	10
Lands out of the county,	-	-	-	3,960	42
Permanent improvements,	-	-	{	40,980	98
				2,176	79
Miscellaneous,	-	-	-	3,016	25
Insurance,	-	-	-	722	00
Law expenses, lands out of the county,	-	-	-	666	67
College,	-	-	-	96,907	02
					\$196,973
					78

To the Fifteenth. That they refer to their answers hereinbefore.

To the Sixteenth. The total amount expended in building the said college was \$1,935,737 46. This sum was the whole product of the income of the \$2,000,000 set apart for the said college, and of the sale of the principal.

The amount expended in fitting and furnishing the same, before it was opened for the reception of pupils, was \$5,886 80.

To the Seventeenth. The college was built, as has been stated in the last answer, exclusively from the proceeds of the income and sale of the capital of the \$2,000,000. There was expended, as has been stated, the sum of \$5,886 80 in fitting and furnishing, before it was opened. Since the college was opened in 1847, it has been maintained out of the income of the whole of the residuary estate, which has been always treated by the defendants as being composed of all of the testator's real and personal estate, except that set apart for the Delaware avenue improvement fund, and the fuel fund. This fund is styled on the defendants' books, the residuary fund. It is credited with rents of real and income of personal estate, and charged with annuities, taxes, repairs, and expenses of management; and the balance has been treated as applicable for the purposes of the college. The defendants are unable to say how much of the income of the real estate in the city and county of Philadelphia has been applied for college purposes, as contradistinguished from the

income of the personality, for the reason that the income from both is blended on their books. The Schuylkill Navigation stock has paid no dividend since the college was opened.

To the Eighteenth. The amount received by the corporation of the mayor, aldermen, and citizens of Philadelphia, as their portion of the purchase money of the land sold under proceedings in partition, as mentioned in the said interrogatory, was \$54,099. It was received September 19th, 1851, and invested, temporarily, in six per cent. loan of the city of Philadelphia. The whole amount, with its interest, namely, \$59,506 50, was finally appropriated in January, 1852, to improve the real estate which was devised by the said will to the defendants, Nos. 102 and 104 Chestnut street, and Nos. 50 and 52 South Third street. So much of the docket entries mentioned in the interrogatory, as the defendants are required to furnish, are as follow:

"In the Court of Common Pleas of Schuylkill county.
March Term, 1849. No. 121.

Plaintiff.	Christopher Loeser,	}	Sums. in Partition issued 19th Dec., 1848.
	<i>vs.</i>		
Hughes and E. Olmsted for the Mayor, etc.	The Mayor, Aldermen, and Citizens of Phila- delphia, and Cornelius Stevenson.		For return, see writ.

30th March, 1849, narr filed."

To the Nineteenth. The proceeds of the sales of the lands in Kentucky are as follows:

1847, June 9,	-	-	-	-	\$120 79
1848, June 12,	-	-	-	-	100 00
1851, July 31,	-	-	-	-	158 21
1854, May 15,	-	-	-	-	385 24
<hr/>					
Total amount received,					\$764 24

Which was invested as follows:

1848, Aug. 18, City 6 per cent. loan -	\$200 00
1854, Jan. 10, " " " "	- 99 25
June 8, - - -	- 380 00
Balance to credit, - - -	- 84 99
	— 764 24

To the Twentieth. There are no entries in the Journals of the Councils mentioned in the interrogatory, other than those of the dates in the said interrogatory concerning the proposal to consolidate into one the various municipal bodies of the county of Philadelphia.

To the Twenty-first. There has been invested, of the income of the residuary estate, and there yet remains in the hand of the defendants, the following:

City loan,	\$3,300, invested April 17, 1847.
9,800,	" June 8, 1847.
800,	" June 24, 1847.
17,300,	" July 19, 1847.
State 5 per cent Loan,	53,608 25, " July 17, 1843, costing \$26,000
	26,315 80, " Sept. 11, 1843, " 15,000
	10,796 30, " Jan. 26, 1841, " 6,909 63

To the Twenty-second. That since the death of the testator, the following investments of the capital of his estate have been made by the mayor, etc.:-

The mortgage of the Mount Carbon Railroad Company, amounting to \$20,000, having been paid off, has been invested: \$10,000 in Loan of the Guardians of the Poor, and \$10,203 18 in 5 per cent. Loan of the county of Philadelphia.

The proceeds of the sale of the lands in Kentucky have been invested as mentioned in the answer to the nineteenth interrogatory.

The proceeds of the sale of lands in Schuylkill county was invested as has been mentioned in the answer to interrogatory eighteenth.

To the Twenty-third. The testator, in his life-time, had made arrangements to cover his square of ground between Chestnut and Market and Eleventh and Twelfth streets. To this end, he had formed his plans of buildings and consulted and employed various mechanics. Immediately after his death the residuary legatees, by their Select and Common Councils, authorized and requested the executors, as such, to cause the square of ground mentioned "to be built upon and improved agreeably to the plan, contracts, and arrangements of the testator," and authorized them "to pay for the same out of the fund that may be in their hands as executors;" and stipulated, that the "receipts which they shall obtain, for all payments made by them in the prosecution of the said improvements, shall be accepted by the mayor, aldermen, and citizens of Philadelphia as a part, to the amount of said receipts, of the residuary estate devised and bequeathed, by the said testator, to the said mayor, aldermen, and citizens of Philadelphia."

The executors accordingly undertook the business of improving the square as above mentioned, and paid for the expenses of the same out of the funds of the estate in their possession. Finally, however, in 1836, the executors found themselves without funds in their hands to complete the improvements, they having paid previously to the residuary legatees, without retaining sufficient to meet the demands on them for the cost of the improvement. The residuary devisees and legatees borrowed money and advanced it to the executors, to enable them to complete the buildings. The money so borrowed the said legatees repaid out of the income of the residuary estate.

The whole cost of the improvement upon the square was \$814,506 40: of this, the amount paid by the executors, out of the funds of the estate in their hands, was \$680,386 62; and out of the income of the residuary estate, the corporation of the mayor, aldermen, and citizens paid \$134,119 78.

How much of the sum so paid by the executors was paid from capital, and how much from interest or income on investments,

or sums at interest, the defendants are unable to state. The sum paid by the mayor, aldermen, and citizens of Philadelphia was entirely from income.

The defendants are not able to state at what times the payments by the executors were made. They were necessarily very numerous, and commenced in the spring of 1832 and terminated in the spring of 1837.

To the Twenty-fourth. The following-named sums have been expended for the erection of buildings upon the testator's real estate, (excepting the college and the buildings upon the square ground between Chestnut and Market, and Eleventh and Twelfth streets,) at the times hereinafter named, viz. :—

1835-6.	For stores on Delaware avenue, north of Market street,	- - - - -	\$22,603 83
1837.	For stores on Front, north of Market streets,	- - - - -	24,765 96
1838-9.	For offices on Fifth street, above Chest- nut, - - - - -	-	9,398 09
1845.	For 4 stores on Water street, - - - - -	-	28,986 25
1857.	For buildings on lot, Coates street, - -	-	3,000 00
1857-8-9.	For buildings on lot on Brown street, - -	-	74,096 89

And the following-named sums for improving and rebuilding real estate, which was of the testator, viz:—

1837.	For extending wharves, - - - - -	-	\$12,000 00
1838.	For extending and rebuilding wharves oppo- site 5 and 6, Delaware avenue, - -	-	7,000 00
1846.	For rebuilding property, No. 100 Chesnut street, - - - - -	-	7,000 00
1847.	For rebuilding property in Jones' alley, - -	-	36,000 00
"	For extending and capping wharves, - -	-	8,000 00
1848.	For improving property front of 66 South Third street, - - - - -	-	1,000 00
"	For improving property rear of 66, South Third street, - - - - -	-	7,000 00

1848.	For improving property 26 and 28 North Front street, - - - - -	1,000 00
1850.	For improving property 5 and 6 North Wharves, - - - - -	962 57
"	For improving foot-way, property, Northern Liberties, - - - - -	381 69
1852.	For improving property 13 and 15 North Water street, - - - - -	1,800 00
1852-3.	For rebuilding property 102 and 104 Chest- nut, and 50 and 52 South Third street,	99,552 42
1853.	For repairing damages by fire, 28 North Front street, - - - - -	512 60

To the Twenty-fifth Interrogatory. The total amount expended upon the said college, for the year 1859, was \$96,907 02, as follows:—

Appropriations from the Residuary Fund, for the Use of the Directors of the Girard College for Orphans, for the year 1859.

	Appropriated.	Expended.	Balance.
Appropriation to the Committee on Household, for			
Subsistence, Item No. 1,.....	\$23,000 00	\$22,958 30	\$41 70
Clothing, Item No. 2,.....	17,000 00	16,815 94	184 06
Salaries, Items Nos. 3, 4, 5, 6, 7, 8, 9,	6,700 00	6,700 00	
Wages, Item No. 10,.....	9,000 00	8,553 03	446 97
Furniture, Item No. 11,.....	1,500 00	1,423 13	76 87
Fuel, Item No. 12,.....	2,500 00	1,908 54	591 46
Gas, Item No. 13,.....	1,800 00	1,430 97	369 03
Repairs and Improvem'ts, Item No. 14,	2,500 00	2,484 66	15 34
Improvement of Grounds, Item No. 15,	2,500 00	2,418 93	81 07
Incidentals, Item No. 16,.....	1,500 00	1,403 43	96 57
Appropriation to the Committee on Instruction, for			
Salaries, Items Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,.....	13,800 00	13,800 00	
School Philosophical Apparatus, Item No. 28,.....	500 00	490 40	9 60
Books and Stationery,.....	1,200 00	1,189 50	10 50
School and Chapel Furniture, Item No. 30,.....	500 00	498 96	1 04
Utensils and Materials for Chemical Laboratory, Item No. 31,.....	250 00	234 33	15 67
Additional Instruction, and to Supply Teachers in Case of Sickness, Item No. 32,.....	300 00		300 00
Appropriation to Committee on Accounts, for			
Salaries, Items Nos. 33, 34,.....	1,650 00	1,650 00	
Printing, Advertising, and Newspapers, Item No. 35,.....	480 00	476 19	3 81
Appropriation to Committee on Library, for Library, Books and Furniture, Item No. 36,.....	1,000 00	992 58	7 42
Appropriation to Committee on Discipline and Discharge, for			
Expenses Binding Out, Advertising, &c., Item No. 37,.....	200 00	81 66	118 34
Reward of Merit, Item No. 38,.....	300 00	251 76	48 24
Expenses of Admission, Advertising, &c., Item No. 39,.....	250 00		250 00
Beds, Bedding, and other Furniture, for additional Pupils at College, Item No. 40,.....	2,500 00	1,282 58	1,317 42
Deficiencies of appropriation, 1858, Item No. 41,.....	117 31	117 31	
New Buildings at College, Balance January 1st, 1859, \$7,432 21		7,426 38	5 83
Appropriation, approved April 28, 1859, Certain Alterations in Main Building,..	2,500 00	2,418 44	81 56
Balance of former Appropri'a'ns, \$7,432 21	\$93,547 31	\$96,907 02	\$4,072 50

To the Twenty-sixth. That on the 20th day of April, 1833, they set apart as the fund of \$2,000,000 for erecting and maintaining the said college, the following stocks and loans, viz:

6,331 shares of stock in the Bank of the U. States, valued at	-	-	-	-	\$644,715
870,000 par Pennsylvania, 5 per cent. loan, valued at	994,418				
199,305 " " " " "	227,367				
100,000 " City of Philadelphia, " " "	113,500				

The above fund, as has been before stated, was all absorbed in building the said college. The annual cost of its maintenance is defrayed from the income of the residuary of the estate, which comprises, as the defendants are advised, the whole of the testator's estate, except so much thereof as is appropriated to the Delaware avenue improvement fund of \$500,000, and the fuel fund of \$10,000.

To the Twenty-seventh. The only sums, portions of the residuary estate, which have been expended on improvements of real estate outside of the corporate limits, which were of the mayor, aldermen, and citizens of Philadelphia, were—

In 1839, the sum of \$14,000; in 1840, the sum of \$14,000; on the Water-Works of the said Corporation at Fairmount.

In 1857, for buildings on lot in Coates street, the sum of \$3,000; and in 1857, 1858, and 1859, the sum of \$74,096 89, for buildings on the lot on Brown street.

The sum of \$28,000, above mentioned, is the only sum which has been expended on the improvement of property not part of the residuary estate, out of the corporate limits of the mayor, aldermen, and citizens of Philadelphia.

To the Twenty-eighth. The five hundred and sixty-seven acres of farm-land in the late districts of Moyamensing and Passyunk are leased for farms or gardens. The annual rent received therefor is \$6,662 50.

To the Twenty-ninth. That many alterations in the charters mentioned in the said interrogatory have been made by the Legislature; but they are not able to specify whether the same were at the instance or against the remonstrance of the said corporation, or whether the said alterations were made without either the application or remonstrance aforesaid.

And the defendants answer, and specially insist to be available to them in such manner as may be according to the practice in equity, and the rules of this honorable court, that Etienne Girard, the father of the plaintiffs, was one of the objects of the testator's bounty, and that a legacy was given to him by his said will, as by reference to the same will appear, and that the said Etienne Girard, before the filing of the plaintiffs' bill, claimed his said legacy from the executors of the said will under the same, and according to the same, and received his said legacy, to wit: on the 2d January, 1833, or thereabouts, from the said executors, under and according to the said will, and not otherwise. And the defendants say that the plaintiffs who claim under the said Etienne Girard, and as his heirs-at-law, are concluded by the election of their ancestor, and cannot now claim against the said will.

And the defendants further answering say, and specially insist to be available as aforementioned, that the said Etienne Girard and Francoise Fenelon Vidal, claiming to be respectively a brother, and niece of the said Stephen Girard, filed their bill in this Court to October Sessions, 1836, No. 1, against the defendants by their then corporate name of the mayor, aldermen, and citizens of Philadelphia, and against the executors of the will of the said Stephen Girard, wherein they prayed the Court to declare the devise of the residue and remainder of the real estate to the defendants to be void, wherein said bill, upon final hearing on answer, replication, and proof, was dismissed by the said Court, and upon appeal to the Supreme Court of the United States, to January Term, 1844, after argument and consideration, the said decree dismissing the said bill was affirmed. And the defendants say, that by the said decree the trusts created

and declared in the said will were decreed to be valid and lawful ; and they pray leave to refer to and produce the record of the said suit, with the same effect as if the same were herein at large set forth.

The defendants further answering say, and here show to the Court, that the plaintiffs claim to be decreed to be entitled to the possession and ownership of the said estate in inconsistent rights, for that in one part of their said bill they so claim because, as they allege, by reason of the effect of the said Act of Assembly of February 2d, 1854, the defendants are disabled from executing the trusts of the said will, and in another part they say that the devise to them is an attempt to create a perpetuity, and therefore void. And they submit that the plaintiffs cannot in the same bill claim under the will and against the will, and they pray that the plaintiffs may be required to elect in which of the said rights they will claim.

All which matters and things are true, without this, that there are any other matters or things in the said bill contained, and not herein well and sufficiently confessed and avoided, traversed and denied, are true, as these defendants will maintain and prove.

And these defendants pray that they may be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

ALEX. HENRY,
Mayor.

[Seal of the City
of Philadelphia.]